# SUPREME COURT OF THE UNITED STATES.

## No. 52.

JOHN GORDON, PLAINTIFF IN ERROR,

vs.

JAMES LONGEST.

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IN ERROR TO THE COURT OF APPEALS OF KENTUCKY.

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*S. D. Langtree, Print.*

dorser, nevertheless alleges and claims a joint damage only. Thus setting forth a defective cause of action, not authorizing the judgment rendered.

2d. The judgment of the court is rendered jointly against the defendants, on seperate contracts and assumsits, in violation of the contracts declared on.

3d. There is error in this, that the plea to the jurisdiction of the court should have been sustained, and the judgment rendered is void for want of jurisdiction.

JOHN HENDERSON,
*Attorney for Appellants.*

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*S. D. Langtree, Print.*

UNITED STATES OF AMERICA.

The President of the United States of America to the Judges of the Court of Appeals in and for the Kentucky District, greeting:

That because in the record and proceedings, and also in affirming a judgment of the Jefferson circuit court, wherein James Longest was plaintiff and John Gordon was defendant, and by the affirmance of said judgment manifest error hath intervened to the great damage of the said John Gordon, as in his complaint hath been alleged, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties in this behalf: you are hereby commanded that, if a judgment be given then, under your seal you distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and associate justices of the Supreme Court of the United States, on the second Monday in January next, the present seat of the national government, that the record and proceedings aforesaid, being inspected, that they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Washington aforesaid, this 15th day of April, A. D. 1840, and in the sitxy-fourth year of our Independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Allowed by G. ROBERTSON,
*Chief Justice Kentucky, this* 15*th April*, 1840.

TO JAMES LONGEST:

Whereas a writ of error hath been issued by the clerk of the eighth circuit court of the United States of America in and for the Kentucky district, on behalf of John Gordon, returnable to the Supreme Court of the United States on the second Monday in January next, to reverse a judgment entered up in the court of appeals for the State of Kentucky, wherein the said John Gordon was appellant and said James Longest was appellee.

These are, therefore, again to cite and command you that you be and appear in the Supreme Court of the United States, at the city of Washington, on the day aforesaid, then and there to hear the errors assigned for the reversal of the said judgment, and to be heard, if any thing you have to say upon the said writ of error.

Witness my hand as chief justice of the court of appeals for the Commonwealth of Kentucky, this 15th day April, A. D. 1840, and in the 64th year of the Independence of the United States.

G. ROBERTSON, *Chief Justice Ky.*

April 22d, 1840, I executed the within monition on James Longest, and delivered to him a true copy thereof.

WM. T. HAGGIN, *D. M.*,
For JOHN M. McCALLA, *M. K. D.*

Wm. T. Haggin makes oath to the above return before me, a justice of the peace for Jefferson county, in the State of Kentucky. Given under my hand this 22d day of April, 1840.

DANIEL C. BANKS, *J. P. J. C.*

STATE OF KENTUCKY, *sct.*

Pleas before Robertson, Chief Justice, and Ewing and Marshall, Judges, composing the Court of Appeals of Kentucky, at the capitol thereof in the town of Frankfort, on the 30th day of October, 1835.

JOHN GORDON, Appellant,
*against*
JAMES LONGEST, Appellee.
} Upon an Appeal from a Judgment of the Jefferson Circuit Court.

1—*Preamble.*

Be it remembered, that heretofore, to wit, on the 6th day of April, in the year of our Lord one thousand eight hundred and thirty-five, the appellant, by his attorneys, filed in the clerk's office of the court of appeals the following transcript and appeal from the Jefferson circuit court, viz:

STATE OF KENTUCKY, *Jefferson Circuit, sct.*

Pleas before the honorable John M. Hewitt, sole Judge of the Jefferson Circuit Court, in the State aforesaid, at the court-house in the city of Louisville, on the 17th October, 1834.

*Parties—Declaration Filed.*

JAMES LONGUST, Plaintiff,
*vs.*
JOHN GORDON, Defendant.
} In Case.

Be it remembered, that heretofore, that is to say, on the 13th day of September, 1833, the plaintiff, by Patrick H. Pope and Joseph Holt, Esqs., his attorneys, filed in the clerk's office of the court aforesaid, his declaration against the said defendant, which is in the words and figures following, to wit:

2—*Declaration.*

JEFFERSON CIRCUIT, *sct.*

James Longest complains of John Gordon, (master of the steamboat Guyandotte,) in custody, &c. of a plea of trespass on the case. For that whereas, heretofore, to wit, on first day of September, 1833, in Louisville, in the circuit aforesaid, the said Longust was possessed in his own right of a certain slave called Jim, about 22 years old, of a light yellow complexion, and of the value of $600; and the said Gordon, being at that time master of said boat, not regarding the rights of said Longust, nor the statutes of the Commonwealth of Kentucky, but contriving, &c. did take and suffer to be taken from Louisville, in the circuit aforesaid, as a passenger on board said steamboat, whereof he was master, the said slave Jim, and did remove or suffer him to be removed away, on said boat, from Louisville, in the circuit aforesaid, to parts unknown to said Longust, and without the knowledge and consent of said Longust, whereby the said slave is utterly lost to said Longust; he, the said Jim not having, as the said Longust avers, in his possession the record of any court of the United States properly exemplified, proving his right to freedoom, nor having the permission of his master, the said Longest, for such removal. By reason of which the said Longust, under the laws of the Commonwealth aforesaid, has a right to sue and recover of the said Gordon the damages he has sustained, which are $1,000; and therefore he sues, &c.

POPE & HOLT, *P. Q.*

And thereupon, by order of said plaintiff's attorneys, the clerk of the court aforesaid, issued forth of his office aforesaid, a *capias ad respondendum*, which and the said clerk's certified endorsement, and sheriff's return thereon, are in the words and figures, following, viz:

3—*Capias.*

The Commonwealth of Kentucky to the Sheriff of Jefferson County, greeting:

We command you to take John Gordon, master of the steamboat Guyandotte, if he be found within your bailiwick, and him safely keep, so that you have his body before the judge of our circuit court for the Jefferson circuit, at the court-house in Louisville, on the first day of our ensuing September term, to answer James Longust of a plea of trespass on the case, damage $1,000, and have then there this writ.

Witness Edmnnd P. Pope, clerk of our said court, at the court-house aforesaid, this 13th day of September, 1833, and in the 42d year of the Commonwealth.

EDMUND P. POPE.

*Endorsement on Capias.*

An action of trespass on the case and no bail required.

POPE & HOLT.

Attest: EDMUND P. POPE, *Clerk.*

*Sheriff's Return.*

Came to hand 16th day of September, 1833, and on same day executed on John Gordon.

J. McMICHAEL, *D. S.*,
For BEN. HEAD, *S. J. C.*

4—*Motion to change Venire Overruled.*

And at a court continued and held for the circuit, and at the court-house aforesaid, on Thursday the 10th day of October, 1833, came the defendant, by his attorney, and upon his petition, herein filed, moved the court to order the *venire* in this case from the Jefferson circuit to the seventh circuit of the United States court holden at Frankfort, Kentucky; to which the plaintiff, by his attorney, objected; and the court, being sufficiently advised, &c., it is ordered that said motion be overruled.

*Exceptions.*

And thereupon, the defendant by his attorney tendered to the court his bill of exceptions herein, which being signed and sealed by the court, is ordered to be made a part of the record of proceedings herein, and follows in these words and figures, to wit:

LONGUST, *vs.* GORDON. } Memorandum.

On this day the defendant entered his appearance to this suit, and upon entering his appearance, filed his petition, to have this case removed to the United States court of the 7th circuit and Kentucky district, which petition was sworn to and is marked (A,) said defendant offered to prove that he is a citizen of Pennsylvania, and that plaintiff is a citizen of Kentucky, by other evidence if required; and he offered to give bond and good security, according to law. He also read to the court the plaintiff's declaration, and thereupon it was admitted that plaintiff was a citizen of Kentucky, and that defendant it a citizen of Pennsylvania; and the defendant objected to the removal, and the court decided that it did not appear to the satisfaction of the court, that the amount in con-

troversey in this suit exceeds $500, exclusive of costs, and sustained the objection, and refused to remove the cause. To which opinion of the court, the defendant excepts, &c.

J. M. HEWITT, [L. S.]

5—*Petition for change Venire.*

Which petition referred to, in the above order of the 10th October, 1833, and mentioned in the foregoing bill of exceptions, is in the words and figures, following to wit:

JAMES LONGUST, *vs.* JOHN GORDON. } Trespass on the case—Jefferson circuit, Kentucky, damages $1,000.

John Gordon the defendant in the above named suit, states that he has been impleaded in the above suit, the process in which was made returnable to the present term of this court, and that it is set for trial for a future day of this term. That he, the said defendant, is a non resident of and not a citizen of the State of Kentucky; and that he is a citizen and resident of the State of Pennsylvania, and is now commanding a steamboat. That he apprehends and fears that he will not obtain a fair trial in the Jefferson circuit court, by reasons of the undue influence of the plaintiff—wherefore, he prays that said suit may be removed to the 7th circuit of the United States, holden at Frankfort Kentucky. Your petitioner states, that plaintiff is a citizen of Kentucky, and the amount in controversy in this suit exclusive of costs, exceeds $540 00.

JOHN GORDON.
*By his Attorney G. Duncan.*

JEFFERSON CIRCUIT, *sct.*
*September Term*, 1833.

This day John Gordon made oath in open court, that the facts stated in the within petition are true. October 5th, 1833.

EDWARD P. POPE, *C. J. C. C.*

6—*Judgment.*

And at a court continued and held for the circuit, and at the court house aforesaid, on Friday the 17th day of October, 1834, came the parties by their attornies, and thereupon the defendant by his attorney filed his plea of not guilty, to which the plaintiff filed a joinder; wherefore let a jury come, &c.; and thereupon came a jury, to wit: David Shain, James C. Sayre, Hugh Rowland, John H. Cutter, Benjamin L. Dorsey, Robert J. Sanders, Elijah Yager, James E. Pearson, Richard E. Smith, Horace B. Hill, William E. Bohannon and Patrick Rooney, who being elected, tried

and sworn, well and truly to try the issue joined upon their oaths, returned into court the following verdict, to wit: "We the of jury find for the plaintiff in damages, four hundred and twenty-five dollars, H. B. Hill, foreman."

It is therefore, considered by the court, that the plaintiff recover against the said defendant, the aforesaid sum of four hundred and twenty-five dollars, the damages by the jurors in their verdict aforesaid assessed, and also his cost in this behalf expended, and may have execution, &c.

And thereupon, the defendant by his attorney, tendered to the court his bill of exceptions herein, which being signed and sealed by the court, is ordered to be made a part of the record of proceedings in this case, and follows in these words and figures, to wit:

*7—Bill of Exceptions.*

Memorandum.

On the trial of this cause, the plaintiff introduced Dr. J. Knight, as a witness, who was sworn; and Dr. Knight testified that he knew a negro man of Mr. Longust named Jim; deponent was employed to attend him in August, 1833, about the first of August; and that in the latter part of August, the last Saturday in August, the boy came to deponent, and was feeble and got some medicine; the negro man was a small man, very prominent cheek bones, bushy head of hair. He had a frock coat on when he attended him, and that he never saw him after Saturday. He was rather dark, he was pale in consequence of sickness, he was between the color of a mulatto and a negro, he was not a dark negro, and he was not a bright mulatto. Plaintiff then read the notice marked, No. 1. The deposition of Williams', filed in this cause, taken at the office of Pope & Holt, on the 17th September, 1833; the defendant objecting to the deposition, and to the answer to each and every leading interrogatory in said deposition, which deposition referred to in said bill of exceptions, is made part thereof, and follows in these words and figures, to wit:

"The deposition of Levi Williams taken at the office of Pope & Holt, in the city of Louisville, on Tuesday the 17th of September, 1833, agreeably to a dedimus and notice herewith filed, to be read as evidence in an action on the case now pending in the Jefferson circuit court, wherein James Longust is plaintiff, and John Gordon is defendant. The deponent being of lawful age, and first duly sworn and examined, deposes and says.

(8.)

Question by plaintiff: Are you a non resident of Kentucky, and if so, where do you reside?

Answer. I am, and reside in the State of Mississippi.

By same: Did or did you not leave the city of Louisville (Ky.) for Cincinnati (Ohio,) on Sunday the first instant, on board the steamboat Guiandotte?

Answer. I did.

By same: Was or was not said steamboat commanded on her said trip from Louisville to Cincinnati by the defendant John Gordon?

Answer. It was.

By same: Did you go on the boat as a deck or cabin passenger?

Answer. As a deck passenger.

By same: Did or did you not see on board of said steamboat as a deck passenger, a very bright mulatto man, low well set person, with high cheek bones, large bushy head, and wearing a frock coat?

Answer. I did.

By same: What was his name?

Answer. Jim.

By same: Was his appearance that of a man in health, or of one recovering from disease?

Answer. From his appearance and manner, and from enquiries made of him, I think he had been sick, and was then recovering.

By same: What induced you to observe him particularly?

Answer. My attention was drawn to him and another mulatto man (his comrade) from their being constantly together, and from Jim's having impudently addressed me with the remark—"your treat this time—mine the next," this was the first remark made to me by him, and it led me to observe the manner and bearing of the fellows, and their peculiar appearance.

(9.)

By same: What seemed to be the age of the negro man Jim?

Answer. I should infer from his appearance, that he was between 23 and 30 years of age.

By same: Was the negro just mentioned taken from the wharf, city of Louisville, or from the Indiana shore?

Answer. I should say he was taken from the wharf in the city of Louisville, the steamboat Guyandotte set out on her trip from said wharf, and I discovered the negro to be on board immediately after the boat left port, and before any passengers had been taken on board from the Indiana shore.

By same: When the Guyandotte landed at Cincinnati, was Jim and his comrade on board?

Answer. They were.

By same: On what day did the boat reach Cincinnati?

Answer. On Monday the 2d instant, at 10 or 11 o'clock A. M.

By same: Are or are you not a stranger to the plaintiff and defendant in this action?

Answer. I never knew either before the occurrence to which my deposition relates.

By same: Do you expect to be in this State again?

Answer. I do not expect at this time that I will, I have no business to call me back. And further this deponent saith not.

LEVI WILLIAMS.

(10.)

And here the plaintiff closed his evidence; defendant then introduced Captain Edmund, who swore that he knows Captain Gordon the defendant, and that he resides and did for a number of years reside in Cincinnati, Ohio, and that he knows the steamer Guyandotte, and that she hailed and did hail in August and September, 1833, from Cincinnatti, Ohio, and that said boat was then wholly owned by persons residing in Cincinnati, Ohio and Washington city, District of Columbia. Defendant then read the deposition of Augustus Wilson, W. Hollinback and James Swearingen, filed in this cause, and made part hereof, and which are in the words and figures, to wit:

(11.)

The deposition of Augustus Wilson, taken at the office of Garnett Duncan in Louisville, to be read as evidence on the trial of the suit in Jefferson circuit, wherein Basil N. Hobbs is plaintiff, and John Gordon is defendant; and also, to be read in the case of Longust *vs.* Gordon; said deponent being of lawful age and duly sworn, deposes and says, that he is and was on the first of September, 1833, mate on the steamer Guyandotte, that he was on her when she left here about the first September for Cincinnati. It was on Sunday she started—that he saw two colored persons get on board the Guyandotte from the Indiana shore, above Jeffersonville, they got on board at different times—the first one that came on board was a mulatto man of light complexion, he had a white hat and frock coat; deponent had a difficulty with this man about wooding, he said he had been out of health, as an excuse for not carrying wood. The other was a dark colored man, deponent did not notice his dress particularly, and could not undertake to describe, both of these men hailed the boat, and we stopped the boat for them—the last one, the black one, came running down the bank and hailing the boat; deponent says, that he saw these two men playing cards most of the way up, and he further says, that he saw no other colored men on board during that trip as passengers, except the two men above spoken of, and he is certain they did not get on board at Louisville, and that the boat stopped, being hailed, and took them in from the Indiana shore.

(12.)

Upon being interrogated by complainant, deponent states that the two negro menabove spoken of, came on board the Guyandotte in the day time, at a point in sight of Jeffersonville on the Indiana side of the river, and also in sight of the Louisville wharf or landing, from which last named place the boat had started on her trip to Cincinnati; he does not know the names of the two men or either of them; that he knows nothing of the contract for transportation of either of the negroes, that being a branch of business on the boat with which he had no concern; that he did not know either of the men, and does not know whether he had ever seen them before; that the

Guyandotte was out on the stream, and the negroes were brought on board in the small boat or yawl.

By complainant: At what hour in the day did the boat leave Louisville?

Answer. I think between 10 and 11 o'clock in the morning.

Are you still mate on board the Guyandotte?

Answer. I am.

Is defendant still captain of said boat?

Answer. He is.

Where do you reside?

Answer. In Cincinnati. And further says not.

AUGUSTUS WILSON.

(13.)

Also the deposition of W. Hollinbeck, taken at the same time and place, to be read on same causes.

Deponent being of lawful age, says he was a deck hand on the Guyandotte when she left here for Cincinnati on Sunday, about 1st September; that he saw no colored man aboard when she started, but such as belonged to the boat, and believes there were none; that the boat was hailed, as above stated in Mr. Wilson's deposition, and two colored men came on board at different times, as therein stated. This deponent was one of the hands in the yawl that brought them in.

Deponent further says, that he lives in the State of Virginia, but is at present on the Guyandotte as a fireman. The mulatto man had on a white hat and frock coat, and white colored pantaloons. Deponent thinks the pantaloons were velvet pantaloons, faded till they were white. The dress of the dark colored man, deponent cannot describe.

On being interrogated by complainant, states that he has no recollection of having seen the negro men, or either of them, before that time; that they were taken and landed at Cincinnati; that the boat arrived at Cincinnati on the morning of the day after she left Louisville, between 8 and 12 o'clock, A. M.; that he knows nothing of the contract made for their transportation; that he did not ask them, or either of them, for their papers or evidences of their right to travel, and that he heard none ask them on the boat. And further saith not.

W. HOLLINBECK.

(14.)

Also the deposition of James Swearingen, taken at the same time and place, to be read as evidence on the same suits.

Deponent being of lawful age, and duly sworn, deposes and says, that he was engineer on the Guyandotte on the 1st September and still is in that capacity. He states that he saw no colored man

on the boat when she started, except those belonging to the boat, and he believes there were none. He recollects to have seen two colored men, one a mulatto, the other of a dark complexion, taken on board, a short distance above Louisville, from the Indiana shore, as stated in the foregoing depositions.

Deponent further states, that his home in the State of Ohio. Deponent was at the engine when the boat stopped, and sent the yawl ashore, and saw both of said colored men as they severally came on board.

And on being interrogated by complainant, deponent states that he did not know either of the negro men, and had not seen them before; that when they came on board the Guyandotte, he did not ask them for their papers or evidences of their right to travel, nor did he hear any person question them on that subject; that said negroes were taken to Cincinnati, in the State of Ohio, and there landed; that he did not see them, or either of them, after they left the boat at Cincinnati; that the defendant, Gordon, was on the boat at the time. And further saith not.

JAMES SWEARINGEN.

( 15. )

STATE OF KENTUCKY, *Jefferson County, to wit:*

I, William Tompkins, a justice of the peace for said county, do certify that the foregoing depositions of Augustus Wilson, W. Hollinbeck, and James Swearingen, were severally taken, subscribed, and sworn to, before me, at the office of Garnett Duncan, Esqr., in the city of Louisville, on the 12th day of June, 1834.

Given under my hand, this 13th June, 1834.

W. TOMPKINS.

The defendant then introduced Basil N. Hobbs, who stated that he was present when the deposition of Williams was taken; and plaintiff asked defendant whether he did not take the negroes, and defendant said he took up two persons of color from the Indiana shore, which corresponded with the advertisement, and that, from the advertisement, he believed one was the negro of plaintiff, and the other of witness: also of S. K. Richardson, who testified that he knew the boy, Jim, of plaintiff, and that he was worth $450; but that if he was disposed to run off, and had actually got to a free State, he should not consider him worth so much; and that he should consider him worth more, after he had gone off, if it were not for the facilities of escaping afforded by steamboats.

And this was all the evidence. Whereupon, the plaintiff asked the court to instruct the jury, severally, as contained in paper marked plaintiff's instructions, and made part hereof, and which are in the words and figures following, to wit:

The plaintiff moves the court to instruct the jury that, if they find from the evidence that defendant was captain of the steam-

boat Guyandotte, and took the plaintiff's negro from the Kentucky shore, and landed him at Cincinnati, Ohio, and that he was lost to the plaintiff, that the defendant is liable to this action, and they may give the plaintiff the value of the negro by way of damages. —Given.

2d. If they find, from the evidence, that the defendant, as captain of the steamboat Guyandotte, put out his yawl when opposite Jeffersonville, in the State of Indiana, took plaintiff's negro on board, and carried him to Cincinnati, and that he was lost to plaintiff, the defendant is liable to this action, and they may give the plaintiff the value of the negro in damage.—Given.

3d. That if defendant took plaintiff's negro from the shore, by sending out his yawl on board the steamboat, of which he was master, in bad faith, and landed him in Cincinnati, so that he was lost to plaintiff, the defendant is liable to this action, and they may give the plaintiff his value in damages.—Given.

(17.)

The defendant asked the court to instruct the jury as contained in the paper marked defendant's instructions, filed in this cause, and made part hereof, and follows in these words and figures, viz:

1st. That so much, act entitled "An act to amend an act to prevent masters of vessels and others, from employing and removing persons of color from this State, approved February 12, 1828, as is in the words following, to wit:

'Be it further, that the liabilities under said act shall accrue whenever the persons of color shall be taken on board any steamvessel, from the shores of the Ohio river opposite the State, to the same extent as if they were taken on board from the shores or rivers within the State," is not within the constitutional power of the Legislature of the State of Kentucky, under the constitution of the United States.—Overruled.

2d. That under the constitution and laws of the United States, a steamboat captain navigating the Ohio river, is not guilty of a breach of duty, by taking persons of color from the Indiana shore, and transporting them in their steamboats, provided such captain shall in good faith, believe such persons of color is free, and that the act of the Kentucky Legislature to the contrary is unconstitutional and void.—Overruled.

3d. If the jury believe from the evidence, that the negroes were taken from the Indiana shore by plaintiff in good faith, believing them to be free, and that they were taken by plaintiff as passengers in the navigation of his boat, that in such case, the jury ought to find for the defendant the issue in this case.—Overruled.

(18.)

4th. That if the persons of color in Kentucky, are in law presumed to be slaves, they are in Indiana presumed *prima facia* to be free, and if the plaintiff took the slave from the Indiana shore in good faith, and under the belief that he was free, in that case, he is not responsible to plaintiff in this action.—Overruled.

5th. That if the defendant was a citizen of the State or Ohio, residing there, and that the steamboat Guyandotte, of which he was commander, did belong to the port of Cincinnati in said State; and that the negro Jim did come on board said boat at the Indiana shore of the Ohio river, and that the said Gordon acted in good faith, and did not know that the said negro Jim was a slave, that then, he is not liable to pay damages to the plaintiff, for having permitted the said slave to come on board the boat, and having taken him on board said boat to Cincinnati in the State of Ohio.—Overruled.

6th. That if the jury believes from the evidence, that the slave Jim was taken on board the Guyandotte, from the State of Indiana, the plaintiff cannot recover in this action.—Overruled.

7th. If the jury believe from the evidence, that the defendant in the navigation of his boat, took the slave in the declaration mentioned, from the Indiana shore, believing him to be free, and that said slave was at the time a runaway slave of plaintiff. In that case they may find for defendant.—Overruled.

(19.)

To which opinions of the court in giving the instructions asked by plaintiff, and overruling the instructions asked by defendant, and each of them separately, the defendant excepts.

J. M. HEWITT, [L. S.]

Which plea of not guilty and joinder referred to in the judgment of said court on the 17th day of October, 1834, at page 5, are in the words and figures following, to wit:

*Plea N. G. & jr. referred to in Judgment.*

LONGUST, }
*vs.* }
GORDON. }

The defendant comes and defends &c., and for plea says plaintiff ought not &c., because he says he is not guilty in manner and form as plaintiff has alleged, and of this he puts himself upon the country.

And plaintiff likewise

DUNCAN, *P. D.*
POPE & HOLT, &c., *P. Q.*

And at a court continued and held for the circuit and at the court house aforesaid, on Saturday the 18th day of October, 1834, came again the parties &c., and thereupon the defendant by his attorney, moved the court for a new trial of this case upon his grounds filed, and the court being sufficiently advised thereof, it is considered and ordered that the same be overruled.

Whereupon, the said defendant, by his attorney, tendered to the court his bill of exceptions herein, which being signed and sealed by the court, is ordered to be made a part of the record of proceedings in the case, and follows in these words and figures, to wit:

(20.)

GORDON *vs.* LONGEST. } Memorandum.

On the trial of this cause, all the evidence that was given is stated in the bill of exceptions filed herein on yesterday, and the court upon that evidence refused to give to the jury the instructions asked by defendant or any of them, which instructions are contained in the paper marked defendant's instructions, part of former bill of exceptions in this cause. And the court gave the instructions marked plaintiff's instructions, and made part of the former bill of exceptions in this cause. And on this day the defendant asked for a new trial on the foregoing causes filed, which motion was overruled by the court, and to this opinion of the court in overruling said motion for new trial defendant excepts, &c.

J. M. HEWITT. [L. S.]

*Order granting Appeal.*

And thereupon the defendant, by his attorney, prayed an appeal to the court of appeals of this State, which granted him upon his entering into an appeal bond in the clerk's office of this court, within twenty days from this time, in the penalty of eight hundred and fifty dollars, with Charles M. Strader his security, conditioned according to law.

21.—*Appeal Bond.*

Which bond was accordingly executed in the said clerk's office, and is in the words and figures following, to wit:

Know all men by these presents, that we, John Gordon and Charles M. Strader are held and firmly bound unto James Longest in the penal sum of eight hundred and fifty dollars, lawful money of the United States, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 7th day of October, 1834.

Whereas at a circuit court continued and held for the Jefferson circuit at the court house in the city of Louisville, on Friday, the 17th day of October, 1834, the following judgment was rendered by said court against the above bound John Gordon in a suit then pending in said court, in which the above bound James Longest was plaintiff, and the said John Gordon was defendant, to wit:

"This day came the parties, by their attornies, and thereupon, the defendant, by his attorney, filed his plea of not guilty; to which the plaintiff filed a joinder. Wherefore to try the issue joined, let a jury come, &c., and thereupon came a jury, to wit: Daniel Shain and others, who being elected, tried and sworn well and truly to try the issue joined upon their oaths, returned into court the following verdict, to wit: we of the jury find for the plaintiff four hundred and twenty-five dollars.

H. B. HILL, *Foreman.*

"It is therefore considered by the court that the plaintiff recover against the said defendant the aforesaid sum of four hundred and twenty-five dollars, the damages by the jurors in their verdict aforesaid assessed, and also his costs in this behalf expended, and may have execution, &c."

(22.)

From which judgment on the 18th day of Obtober, 1834, the defendant prayed an appeal to the court of appeals of this State, which is granted him upon his entering into this bond within twenty days with Charles M. Strader, his security. Now the condition of the foregoing obligation is such, that if the said John Gordon shall well and truly pay to the said plaintiff his judgment aforesaid, and also all such damages and costs as may be awarded him in case he the said John Gordon is unsuccessful in said appeal, or in case the said judgment shall be affirmed, then this obligation to be void, else to remain in full force and virtue.

JOHN GORDON, [L. S.]
By C. M. STRADER.
C. M. STRADER, [L. S.]

Witness.
A. W. WALTER, *D. C.*
Fees for the transcript, &c. $5 00.

I, Edmund P. Pope, clerk of the Jefferson circuit court in the State of Kentucky, do certify that the foregoing 22 pages, (this included,) contain a true, full and complete transcript of the record of proceedings had in the case therein mentioned, according to the rules prescribed by the hon. the court of appeals of said State.

In testimony whereof, I hereunto set my hand at the city of Louisville, the 25th day of November, 1834, and in the 43d year of the Commonwealth.

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*Errors Assigned.*

JAMES LONGEST, Appellant *ads.* JOHN GORDON, Appellee. } Court of Appeals.

The appellant assigns the following errors for the consideration of the court, for which he prays that the judgment may be reversed.

1. The court erred in overruling the motion to remove this cause to the United States court for the seventh circuit and Kentucky district.

2d. The court erred in permitting the deposition of Levi Williams to be read. And the court erred in not excluding each and every answer of the witness contained in said deposition.

3. The court erred in each and every instruction given to the jury at the request of plaintiff Longest.

4. The court erred in refusing to give each and all of the instructions asked by defendant Gordon in the trial of the issue.

5. The court erred in refusing to grant the new trial asked by defendant Gordon.

6. The court erred in each and every decision made in the progress and in the trial of this cause.

J. J. CRITTENDEN & GARNETT DUNCAN,
*Attorneys for Appellant.*

*Default and Heard.*

And afterwards, to wit, at a court of appeals continued and held at the capitol in Frankfort, on the 29th day of October, 1835, came

the appellant by his attorneys, and the appellee, made default, and thereupon this cause came on and was heard on the part of the appellant, but the court not being sufficiently advised, took time.

And afterwards, to wit, at a court of appeals continued and held as aforesaid on the 30th day of October, 1835, the court being sufficiently advised of and concerning the premises, delivered the following opinion, viz :

*Opinion.*

Under the acts of 1824 and 1828, for preventing masters of vessels and others from removing persons of color from this State, the owner of the slave who sues for the removal of his slave contrary to the statute, is entitled to recover such damages only as he has sustained in consequence of the illegal act of the defendant. And although the slave be in fact lost to him, he is not entitled to recover the full value, unless that loss were occasioned by the act of the defendant in taking him on board his boat, as was decided at the present term in the case of Church, &c. *vs.* Chambers.

The first and second instructions given in this case are therefore erroneous, inasmuch as they imply that if the slave was lost the jury might find damages therefor, to the amount of his total value, whether the loss was occasioned by the act of the defendant or not.

*Judgment.*

It is therefore considered by the court that for this error the judgment of the circuit court be reversed, and the cause remanded ; which is ordered to be certified to said court.

And it is further considered by the court that the appellant recover against the appellee his costs herein expended.

STATE OF KENTUCKY, *sct.*

Pleas before Robertson, chief justice, and Ewing and Marshall, judges, composing the court of appeals of Kentucky, at the capitol in the town of Frankfort, on the 9th day of May, 1839.

JOHN GORDON, Appellant, *against* JAMES LONGEST, Appellee. } Upon an Appeal from a Judgment of the Jefferson Circuit Court.

( 1. )

*Preamble.*

Be it remembered, that heretofore, to wit, on the 4th day of October, in the year of our Lord one thousand eight hundred and thirty-

eight, the appellant by his attorneys filed in the clerk's office of the court of appeals the following transcript and appeal thereon from the Jefferson circuit court, viz:

*Parties.*

COMMONWEALTH OF KENTUCKY.

Pleas held before the honorable John J. Marshall, sole judge of the Jefferson circuit court in the Commonwealth aforesaid, at the court house in the city of Louisville, on the 11th day of April, 1838.

*Opinion of Court of Appeals.*

JAMES LONGEST, Plaintiff
*against* } In Case.
JOHN GORDON, Defendant.

Be it remembered, that heretofore, that is to say, on the 18th day of November, 1835, at a court held for the circuit, and at the court house aforesaid, came the defendant by his attorney, and produced the opinion of the honorable the court of appeals of this State, in this case, which was ordered to be filed; the mandatory part of which is in the words and figures following, viz:

*Mandatory part of Opinion.*

"The court being sufficiently advised of and concerning the premises, delivered the following opinion:

"It is therefore considered by the court that the judgment of the circuit court be reversed, and the cause remanded for a new trial, consistent with the opinion of this court; which is ordered to be certified to said court."

*Jury to try Issue and Verdict.*

—And this case was continued, generally until the March term of said court; at which term, to wit, on the 21st day of March, 1838, at a court held for the circuit and at the court house aforesaid, came the parties, by their attorneys.

(2.)

Wherefore, to try the issue joined, let a jury come, and thereupon came a jury, to wit:

Squire Lochry, Niel Kelly, Joseph Irvine, James Graves, Edward Reese, John Barber, John R. Parrent, John M. Monohan, John Daily, Charles D. Loveland, Samuel Wilson, and J. S. Litchgon, who being elected, tried and sworn well and truly to try the

issue joined upon their oaths, returned into court the following verdict, to wit:

"We of the jury find for the plaintiff six hundred and fifty dollars in damages.

SQUIRE LOCHRY, *Foreman.*"

And thereupon the defendant tendered to the court his bill of exceptions, herein, which being signed and sealed by the court, are ordered to be made a part of the record of proceedings herein, and follow in these words and figures, *to wit*:

*Defendants' Bill of Exceptions.*

Memorandum.

On the trial of this cause, on this day, the plaintiff read from the bill of exceptions filed herein, the testimony of Doctor Knight; and also read the notice marked No. 1, and offered to read the depositions of Williams and Oliphant, filed in this cause, to the reading of which depositions defendant objected, and the court overruled the objections of defendant and permitted said depositions to be read.

Plaintiff introduced J. B. Bowles, who testified that he sold to plaintiff a negro man named Jim, who was a mulatto man, and rather small in size, for $500; the time he could not state particularly, but he believed it was between 1831 and 1834, and a few weeks before the slave ran off, and who stated that plaintiff had told this witness that Jim had been convicted in New York and committed to the state prison at Auburn, and that Jim died in the New York state prison in September, 1837. It was admitted that with Oliphant. Plaintiff also introduced Mr. Powers, who stated that he knew the plaintiff's slave Jim; that he was worth $125 a year as hire, and that he at the request of plaintiff went with plaintiff to New York as a witness to identify the said negro as the property of plaintiff, and that it was ascertained at Rochester that the negro had died in the state prison some months before.

And the defendant read from said bill of exceptions the statement of Captain Edmonds. And the defendant also read the depositions of Wilson, Hollinbeck, and Swearingen, filed herein; which bill of exceptions and depositions are in the words and figures following, to wit:

(3.)

*Excep's marked N. X. and Y. part of the foregoing Exceptions.*

Memorandum.

"On the trial of this cause the plaintiff introduced Dr. J. Knight as a witness, who was sworn, and Dr. Knight testified that he

knew a negro man of Mr. Longest, named Jim. Deponent was employed to attend him in August, 1833, about the 1st of August, and that in the latter part of August, the last Saturday in August, the boy came to deponent and was feeble and got some medicine; the negro man was a small man, very prominent cheek bones, bushy head of hair; he had a frock coat when he attended him, and that he never saw him after Saturday. He was rather dark; he was pale in consequence of sickness; he was between the color of a mulatto and a negro. He was not a dark negro and he was not a bright mulatto.

(4.)

"The plaintiff then read the notice marked No. 1, the deposition of Williams, filed in this cause, taken at the office of Pope & Holt on the 17th September, 1833. The defendant objecting to the depositions and to the answer of each and every leading interrogatory in said depositions. (Here insert said deposition of Williams.) And here the plaintiff closed his evidence.

"The defendant then introduced Captain Edmonds, who swore that he knows Captain Gordon, the defendant, and that he resides and did for a number of years reside in Cincinnati, Ohio; and that he knows the steamer Guyandotte, and that she hailed and did hail in August and September, 1833, from Cincinnati, Ohio; and that said boat was then wholly owned by persons residing in Cincinnati, Ohio, and Washington city, District of Columbia.

"Defendant then read the depositions of Augustus Wilson, W. Hollinbeck, and James Swearingen, filed in this cause, and made part hereof. (Here insert them.)

"The defendant, Bazil N. Hobbs, they introduced, who stated that he was present when the deposition of Williams was taken, and plaintiff asked defendant whether he did not take the negroes, and defendant said he took up two persons of color or negroes from the Indiana shore, which corresponded with the advertisement, and that from the advertisement he believed one was the negro of plaintiff and the other of witness. Also, K. Richardson, who testified that he knew boy Jim of plaintiff, and that he was worth $450, but that if he was disposed to run off and had actually got off to a free State he should not consider him worth so much; and that he should not consider him worth more after he had gone off if it were not for the facilities for escaping afforded by steamboats; and this was all the evidence.

(5.)

"Whereupon the plaintiff asked the court to instruct the jury severally, as contained in paper marked plaintiff's instructions, and made part hereof. (Here insert them.) And the defendant asked the court to instruct the jury, as contained in paper marked

defendant's instructions, filed in this cause and made part hereof. (Here insert said instructions.) To which opinions of the court, in giving the instructions asked by the plaintiff and overruling the instructions asked by defendant, and each of them, the defendant excepts.

J. M. HEWITT. [L. S.]

*Deposition of Aug. Wilson—part of Exceptions.*

"The deposition of Augustus Wilson, taken at the office of Garnett Duncan, in Louisville, to be read as evidence on the trial of the suit in the Jefferson Circuit Court, wherein Bazil N. Hobbs is plaintiff and John Gordon is defendant; also to be read in the case of Longest against Gordon. Said deponent being of lawful age and duly sworn, deposes and says that he is and was on the 1st day of September, 1833, mate on the steamer Guyandotte; that he was in her when she left here about the 1st day of September for Cincinnati. It was on Sunday she started; that he saw two colored persons get on board the Guyandotte from the Indiana shore, above Jeffersonville; they got on board at different times; the first one that came on board was a mulatto man, of light complexion, he had a white hat and frock coat. Deponent had a difficulty with this man about wooding; he said he had been out of health, as an excuse for not carrying wood. The other was a dark colored man; deponent did not notice his dress particularly, and could not undertake to describe him; both of said men hailed the boat and we stopped the boat for them. The last one, the black one, came running down the bank and hailed the boat. Deponent says that he saw these two men playing cards most of the trip up, and he further says that he saw no other colored men on board during that trip as passengers except the two men above spoken of, and he is certain they did not get on board at Louisville, and that the boat stopped, being hailed, and took them in from the Indiana shore. Upon being interrogated by complainant, deponent states that the two negro men above spoken of came on board the Guyandotte in the day time, at a point in sight of Jeffersonville, on the Indiana side of the river, and also in sight of the Louisville wharf or landing, from which last place the boat had started on her trip to Cincinnati; he does not know the names of the two men or either of them; that he knows nothing of the contract for transportation of either of the negroes, that being a branch of business on the boat with which he had no concern; that he did not know either of the men, and does not know whether he had ever seen them before; that the Guyandotte was out in the stream, and the negroes were brought on board in the small boat or yawl.

By complainant. At what hour in the day did the boat leave Louisville?

Answer. I think between ten and eleven in the morning.

Are you still mate on board of the Guyandotte?

Answer. I am.
Is defendant still captain of said boat?
Answer. He is.
Where do you reside?
Answer. In Cincinnati.
And further says not.

AUGUSTUS WILSON."

(7.)

*Deposition of W. Hollinbeck—part of Bill of Exceptions.*

"Also the deposition of W. Hollinbeck, taken at same time and place, to be read in same causes.

"Deponent, being of lawful age, says he was a deck hand on the Guyandotte when she left here for Cincinnati on Sunday about the 1st of September. That he saw no colored men aboard when she started but such as belonged to the boat, and believes there was none. That the boat was hailed, as above stated in Mr. Wilson's deposition, and two colored men came on board at different times as therein stated. The deponent was one of the hands in the yawl that brought them in. Deponent further says that he lives in Virginia, but is at present on the Guiandotte as a fireman. The mulatto man had on a white hat and frock coat and white colored pantaloons. Deponent thinks the pantaloons were velvet pantaloons, faded till they were white. The dress of the dark colored man deponent cannot describe.

On being interrogated by complainant, states that he has no recollection of having seen the negro men, or either of, before that time; that they were taken and landed at Cincinnati; that the boat arrived at Cincinnati on the morning of the day after she left Louisville between 8 and 12 o'clock, A. M. That he knows nothing of the contract made for their transportation; that he did not ask them or either of them for their papers or evidences of their right to travel, and that he heard none asked them on the boat. And further saith not.

W. HOLLINBECK.

(8.)

*Deposition—part of do.*

"Also the deposition of James Swearingen, taken at the same time and place, to be read as evidence in same suits.

"Deponent, being of lawful age and duly sworn, deposes and says that he was engineer on the Guiandotte on the 1st Sept. and still is in that capacity; that he saw no colored man on the boat when she started except those belonging to the boat, and he believes there were none. He recollects to have seen two colored

men, one a mulatto the other of a dark complexion, taken on board a short distance above Louisville from the Indiana shore, as stated in the foregoing depositions. Deponent further says that his house is in the State of Ohio. Deponent was at the engine when the boat stopped and set the yawl ashore, and saw both of said colored men come on board. On being interrogated by complainant deponent states that he had not known either of the negro men and had seen them before; that when they came on board the Guiandotte he did not ask them for their papers or evidence of their right to travel, nor did he hear any person question them on that subject; that said negroes were taken to Cincinnati, in the State of Ohio, and there landed; that he did not see them or either of them after they left the boat; that the defendant, Gordon, was on the boat at the time. And further saith not.

JAMES SWEARINGEN.

(9.)

STATE OF KENTUCKY,
*Jefferson County, to wit:*

I, William Tompkins, a justice of the peace for said county, do certify that the foregoing depositions of Augustus Wilson, W. Hollinbeck, and James Swearingen were severally taken, subscribed, and sworn to before me, at the office of Garnett Duncan, Esq. in the city of Louisville, on the 13th day of June, 1834.

Given under my hand, this 13th June, 1834.

W. TOMPKINS.

And this was all the evidence. Whereupon the plaintiff asked the court severally to instruct the jury, as stated in paper marked A, B, C, and made part hereof, and which are in the words and figures following, viz:

*Instructions of plaintiff—part of Exceptions.*

"The plaintiff moves the court to instruct the jury that if they, from the evidence that defendant was captain of the steamboat Guiandotte, and took the plaintiff's negro from the Kentucky shore and landed him at Cincinnati, Ohio, and was thereby lost to the plaintiff, that the defendant is liable to this action, and they ought to find for the plaintiff all such damages as he has sustained.

2. If they find from the evidence that defendant, as captain of the steamboat Guyandotte, sent out his yawl when opposite Jeffersonville, in the State of Indiana, and took plaintiff's negro on board said boat and carried him to Cincinnati, in the State of *Indiana*, and he was thereby lost to the plaintiff, the defendant is liable to this action, and they ought to find for the plaintiff all such damages as he has sustained. That if defendant took plain-

tiff's slave from the State of Kentucky, or sent out his yawl and took plaintiff's slave on board the steamboat Guiandotte, of which he was captain, and landed him in the State of Ohio, and he was thereby lost to the plaintiff, the defendant is liable to this action, and they may give the plaintiff all such damages as he sustained thereby."

(10.)

To the giving of each of which the defendant objected, and the defendant asked the court severally to instruct the jury, as stated in the several instructions 1, 2, 3, 4, 5, 6, 7, 8, and 9, *sus*tained in the paper marked defendant's instructions, filed in this cause, and which are in the words and figures following to wit:

Instructions 1, 2, 3, 4, 5, 6, 7, 8, 9, Part of Exceptions.

1. That so much act entitled "An act to amend an act to prevent the masters of vessels and others, from employing or removing persons of color from the State, approved February 12, 1828, as is in the words following, to wit: Be it further enacted, that the liabilities under said act shall accrue whenever the person of color shall be taken on board any steam-vessel from the shores of the Ohio river, opposite to this State, to the same extent as if they were taken on board from the shores or rivers within this State," is not within the constitutional power of the legislation of the State of Kentucky, under the Constitution of the United States.—Overruled.

2. "That under the Constitution and laws of the United States a steamboat captain navigating the Ohio river, is not guilty of a breach of duty by taking persons of color from the Indiana shore, and transporting them in their steamboats, provided such captains shall in good faith believe such persons of color is free, and that the act of the Kentucky Legislature to the contrary is unconstitutional and void.—Overruled.

"3. If the jury believe from the evidence, that the negroes were taken from the Indiana shore by plaintiff in good faith, believing them to be free, and that they were taken by plaintiff as passengers in the navigation of his boat, that in such case the jury ought to find for the defendant the issue in this cause.—Overruled.

(11.)

"4. That although persons of color in Kentucky are in law presumed to be slaves, they are in Indiana presumed *prima facia* to be free, and if plaintiff takes the slave in declarations mentioned from the Indiana shore in good faith, under the belief that he was free, in that case he is not responsible to plaintiff in this action.—Over ruled.

"5. That if the jury shall find that defendant took the slave Jim from Indiana, believing him to be free, and that Jim was at the time of going on board defendants boat a runaway slave of plaintiff, that in that case the value of the negro in Kentucky, before he ranaway, is not the measure of damages, but that only such damages as resulted from defendants ——— ought to be assessed against him.

"6. That if the defendant was a citizen of the State of Ohio residing there, and that the steamboat Guiandotte, of which he was commander, did belong to the port of Cincinnati, in said State, and that the negro Jim did come on board the said boat at the Indiana shore of the Ohio river, and that said Gordon acted in good faith, and did not know that the said negro Jim was a slave, that then he is not liable to pay damages to the plaintiff for having permitted the said slave to come on board his boat, and having taken him on board said boat to Cincinnati, in the State of Ohio.—Overruled.

"7. That if the jury believe from the evidence, that the slave Jim was taken on board the Guiandotte from the State of Indiana, the plaintiff cannot recover in this action.—Overruled.

"8. If the jury believe from the evidence, that the defendant in the navigation of his boat took the slave in the declaration mentioned from the Indiana shore, believing him to be free, and that slave was at the time a runaway slave of plaintiff, in that case they may find for defendant.—Overruled.

( 12. )

"9. That to enable the plaintiff to recover in this action, the jury must believe that the defendant took plaintiff's slave from Louisville, or from the Kentucky shore."

And the court gave to the jury the instructions as asked by plaintiff, and refused the instructions asked by the defendant, and each of them as aforesaid Nos. 1, 2, 3, 4, 6, 7, 8, and 9; and to each of said decisions and judgments of the court in permitting said depositions of Williams & Oliphant, to be read, and in giving the instructions in paper A. B. C. contained, and in refusing the instructions 1, 2, 3, 4, 6, 7, 8, and 9, and each of them, the defendant excepts, and prays that this his exceptions may be signed, sealed, &c., which is done.

J. J. MARSHALL, [L. S.]

[See judgment omitted to be inserted here, in page 13 of this transcript.]

*Motion for New Trial, Exceptions Filed and Appeal Granted.*

And on another day of said last mentiond term of said court, to wit: the 11th April, 1838, came the defendant by his attorney, and

moved the court for a new trial in this case, on the following grounds, to wit:

1. Because the verdict is contrary to law and evidence in this case.
2. Because the verdict is not justified by the evidence.
3. Because the court erred in the instructions given to the jury.
4. Because the court erred in refusing to give instructions asked by the defendant, and which ought to have been given.
5. Because the court ought long since to have removed the case.
6. Because erred in permitting illegal evidence to go to the jury.

( 13. )

And the court being sufficiently advised, it is ordered, that the said motion be overruled, and thereupon the defendant filed his bill of exceptions herein, which being signed and sealed by the court, is ordered to be made a part of the record of proceedings herein, and follows in these words and figures, to wit:

Memorandum.

On the day of the last trial of this cause the defendant filed a bill of exceptions, which set forth all the evidence given on the last trial, and on this day the defendant asked the court for a new trial on the causes filed, and the plaintiff opposed the motion, and refused to grant the new trial as asked; to which opinions of the court defendant excepts, and prays this his exception may be signed, sealed, &c., which is accordingly done.

J. J. MARSHALL, [L. S.]

*Appeal Granted.*

And the defendant also prayed an appeal to the honorable the court of appeal of this State, which is granted him, upon his executing bond in the clerk's office of this court, in the penalty of thirteen hundred dollars, with Charles M. Strader, his security, in twenty days from this time, conditioned according to law.

*Judgment.*

[Judgment omitted to be inserted in preceeding page.]

And on another day of said last mentioned term, to wit the 9th April, 1838, came the plaintiff into court in proper person, and paid the jury tax as required by law, upon the verdict rendered herein on the 31st ultimo; whereupon, it is ordered that judgment be rendered in conformity to said verdict. It is therefore considered by the court that the plaintiff recover of the said defendant the sum of six hundred and fifty dollars, the damages by the jury in their verdict in manner and form aforesaid assessed, and also his costs herein expended, and may have execution, &c.

( 14. )—*Appeal Bond.*

And on the 21st April, 1838, the defendant with C. M. Strader, his security, executed in the clerk's office of said court, the following appeal bond, to wit:

Know all men by these presents, that we, John Gordon and Charles M. Strader, are held and firmly bound unto James Longest, in the sum of thirteen hundred dollars lawful money, to be paid to the said James Longest, his heirs, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents, sealed with our seals, and dated the 21st day of April, 1838.

The condition of the above obligation is such, that whereas in a suit lately depending in the Jefferson circuit court, wherein the said Longestwas plaintiff, and the said Gordon was defendant, said court rendered the following verdict, to wit, on the 31st day of March, 1838, came the parties by their attorneys, wherefore to try the issue joined let a jury come; and thereupon came a jury, to wit, Squire Lockry, Neal Kelly, Joseph Irwin, James Graves, Edward Reese, John Barber, John R. Parrent, John M. Monohan, John Dailey, Charles D. Loveland, Samuel Willson, and J. S. Litchegon, who being elected, tried and sworn, well and truly to try the issue joined upon their oaths, returned into court the following verdict, to wit: We the jury find for the plaintiff six hundred and fifty dollars in damages.

SQUIRE LOCHRY, *Foreman.*

It is therefore considered by the court, that the plaintiff recover of the said defendant, the sum of six hundred and fifty dollars, the damages by the jurors in manner and form aforesaid, and also his costs herein expended, and may have execution, &c.

( 15. )

And on the 11th day of April, 1838, at the same term, said court made the following order, to wit, came the defendant by his attorney, and moved the court for a new trial in this cause, upon the following grounds, to wit, (here insert them.)

And the court being sufficiently advised, it is ordered, that the said motion be overruled; and thereupon the defendant filed his bill of exceptions herein, which being signed and sealed by the court, is ordered to be made a part of the record of proceedings herein, and follows in these words and figures, (here insert them.)

And the defendant also prayed an appeal to the honorable the court of appeals of this State, which is granted him upon his executing bond in the clerk's office of this court, in the penalty of thirteen hundred dollars, with Charles M. Strader, his security, in twenty days from this time, conditioned according to law.

Now therefore, if the said John Gordon, shall satisfy the judg-

ment aforesaid, and also pay all such damages and costs, as shall be awarded against him, in case he shall fail to prosecute the said appeal with effect, or in case the said judgment shall be affirmed by the court of appeals, in whole or in part, or in case the said appeal shall be dismissed, then the above and foregoing obligation to be void, else to remain in full force and virtue.

JOHN GORDON, [L. S.]
C. M. STADER, [L. S.]

I, Edmund P. Pope, clerk of the Jefferson circuit court, in the State of Kentucky, do certify that the foregoing fifteen pages, contain a full, true and complete transcript of the record and proceedings had in the case therein mentioned, since the filing of the opinion of the honorable the court of appeals, and reinstating thereof upon the docket of this court.

In witness whereof, I have hereunto set my hand, this 1st day of May, 1838, and in the forty-sixth year of the Commonwealth.

EDMUND P. POPE.

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*Errors.*

GORDON *vs.* LONGEST. } Assignment of Errors.

The appellant assigns the following errors, for which and each of which he claims a removal of this cause; and appellant again brings to the consideration of the court the original record:

1st. The court erred in refusing to remove this cause to the federal court upon the petition of appellant, filed on his first entering his appearance to this suit. The appellant claims that he had a right to a trial in the United States court, and that the whole proceedings in this cause, subsequent to application to remove, are against law.

2d. The circuit court erred in each and every instruction given on the trial, at the instance of the plaintiff.

3d. The court erred in refusing to give each and every instruction asked by appellant, Gordon, on the last trial.

4th. The circuit court erred in refusing to grant a new trial, and in overruling the motion of the appellant, Gordon, for a new trial on the grounds filed by him.

5th. The circuit court has, in violation of the constitution of the United States and of an act of Congress, clung to a jurisdiction that did not rightfully belong to a State court, and on the trial of the cause, given instructions in violation of the constitution of the United States, and the appellant relies upon each and every article of the constitution of the United States for a reversal.

6th. The court permitted improper evidence to go to the jury though it was objected to in proper time.

7th. The court erred in each and every decision made in the progress of this cause.

G. DUNCAN and
JNO. J. CRITTINDEN, *P. Q.*

*Argued.*

And afterwards, to wit, at a court of appeals continued and held at the capitol, in Frankfort, on the 3d day of May, 1839, came the parties aforesaid, by their attorneys, and thereupon this cause was argued, but the court, not being sufficiently advised, took time.

And afterwards, to wit, at a court continued and held as aforesaid, on the 9th day of May, 1839, the court being sufficiently advised, it seems to them that there is no error in the judgment.

*Judgment Affirmed.*

It is therefore considered by the court that the judgment of the circuit court be *affirmed*, and that the appellee recover against the appellant ten per centum damages on the amount of the judgment, which is ordered to be certified to said court.

And it is further considered by the court that the appellee recover against the appellant his costs herein expended.

STATE OF KENTUCKY, *sct.*

I, Jacob Swigert, clerk of the court of appeals, for the State aforesaid, do hereby certify that the foregoing twenty-six pages (taken together) contain full, true and complete transcripts of the two records and the proceedings had thereon in each, as the same remain of record and on file in my office.

In testimony whereof I have hereto set my hand and caused the seal of said office to be hereunto affixed, this 20th day of May, A. D. 1839, and in the 47th year of the Commonwealth.

[L. S.]

J. SWIGERT, *Clerk.*

(Fees $13,00.)

GORDON
*vs.*
LONGEST.

On a writ of error from the honorable the court of appeals, of the Commonweath of Kentucky.

To the honorable the Judges of the Supreme Court of the United States:

Your petitioner, John Gordon, would respectfully represent, that in the foregoing record of J. Longest against him, which has been decided by the court of appeals of Kentucky, manifest injury and wrong has been done him by the decision in said suit, and that he is advised that the Supreme Court of the United States has appropriate jurisdiction to revise and reverse the said judgment of the court of appeals, of Kentucky.

He would respectfully ask the attention of the court to each and every judgment and decison of the Jefferson circuit court, and of the said court of appeals, but more especially to the decision of the Jefferson circuit court refusing to remove said suit to the United States circuit court, for the 7th circuit and Kentucky district, and to the decision of said court of appeals affirming that decision of the Jefferson circuit court, he is advised, and avers that said decision was in direct conflict with the 11th and 12th sections of the judiciary act of Congress of 1789.

And the said circuit court erred in decideing, and the said court of appeals erred in affirming the decision of said Jefferson circuit court; that the several instructions asked by your petitioner on the second trial of this cause should not be given; and also in this, that the new trial as asked, should not be given. And said courts erred in decideing that an act of the General Assembly of the Commonwealth of Kentucky, entitled, an act to amend an act to prevent masters of vessels and others from employing or removing persons of color from this State, approved 12th February, 1828, was and is within the powers reserved to the said Commonwealth of Kentucky, under the Constitution and laws of the United States.

He is advised, and avers, that said Jefferson circuit court, and said court of appeals, erred and violated the Constitution of the United States, and the laws made in pursuance thereof, by deciding in this cause; that the defendant, whilst navigating the Ohio river as captain of a steamboat not belonging to Kentucky, was guilty of a breach of duty, by taking a person of color from the Indiana shore, in good faith and under the belief that such person of color was free.

He is advised, and claims, that said Jefferson circuit court erred, and said court of appeals erred and violated the compact with Virginia of 18th December, 1789, and also violated and set at naught the Constitution of the United States, by deciding that the pretended State law of Kentucky set forth and referred to in this record,